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INSIGNIA OF THE DAUGHTERS OF THE AMERICAN REVOLUTION

HEARING

BEFORE THE

COMMITTEE ON PATENTS

HOUSE OF REPRESENTATIVES

SIXTY-FOURTH CONGRESS

FIRST SESSION

ON

A BILL TO EXTEND PATENT ON THE INSIGNIA OF THE
DAUGHTERS OF THE AMERICAN REVOLUTION

APRIL 5, 1916

COMMITTEE ON PATENTS,

HOUSE OF REPRESENTATIVES.

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INSIGNIA OF THE DAUGHTERS OF THE AMERICAN REVOLUTION.

COMMITTEE ON PATENTS,
HOUSE OF REPRESENTATIVES,
Wednesday, April 5, 1916.

The committee met at 11 o'clock a. m.

Present: Representatives Oglesby (acting chairman), Smith, Carter, and Glynn.

Mr. OGLESBY. You may proceed, Mr. Davis.

STATEMENT OF HON. C. R. DAVIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MINNESOTA.

Mr. DAVIS. This bill is Senate 4889. It was introduced by Senator Clapp, of Minnesota, and it passed the Senate unanimously March 17, 1916.

The Daughters of the American Revolution was incorporated by an act of Congress of February 20, 1896. Their present membership is about 100,000.

In 1891 they obtained a patent, No. 21053, upon what is known as their "insignia." The patent has since expired and certain people throughout the United States are now using it in a commercial way. It is not a commercial proposition in any sense of the word with the Daughters of the American Revolution: in fact, none of their members can legally wear it until they obtain it by a permit issued by the registrar general of the Daughters of the American Revolution.

They desire now to extend this patent to as long a time as possible by this congressional act. The Senate passed this bill for a perpetual time, using the words: "Shall be permanently renewed and extended, with all the rights and privileges extended to the same as of the original patent."

Quite a number of good lawyers in the Senate claim that this is an exception to the rule, and that the Constitution does not apply to it, wherein the Constitution says that Congress may issue patents for a limited number of years.

I, therefore, being very much interested in the validity of this patent, if you do extend it, will say that if the committee does see fit to extend it for a limited number of years, I do not care whether you make it 17, 25, or any number of years, instead of perpetually: then the Daughters can come again to Congress and obtain a further extension of it, although Senators Smoot and Clapp and other lawyers there claimed that the Constitution does not apply to this: and they passed it unanimously in its present form.

I think that is about all, Mr. Chairman, that I desire to say. You may strike out, if you desire, the word "permanently," and put in for any number of years that you see fit.

I am very anxious about this for quite a number of reasons: First, on behalf of the daughters, who are very anxious to have it, and then Mrs. Davis happens to be one of the vice president generals of the United States, and she is also chairman of the legislative committee of the national society, to aid in obtaining for them such legislation as they desire. The daughters are very anxious to get this through as speedily as possible, because their Congress meets on the 17th of this month, and there will probably be anywhere from 3,000 to 5,000 of them present, and they would like to be able to report the same as a law at this session.

It is not a commercial proposition at all; they exclusively handle it.

Mr. OGLESBY. Mr. Davis, do you know whether they get any royalty?

Mr. DAVIS. They do not.

Mr. OGLESBY. No royalty from the makers of this insignia?

Mr. DAVIS. Not any sum whatsoever.

Mr. OGLESBY. All they want is to control it absolutely.

Mr. DAVIS. To control it absolutely for the use of their own members, and their constitution and by-laws prohibit anything to the contrary.

They simply hire a jeweler to make it for them, and he can not deliver one of the insignia except upon express order of the registrar general of the Daughters of the American Revolution when a new member comes in and wants an insignia.

It is now being used, as I am informed, by some tanning factories in the west, called the "D. A. R. Brand," etc., and possibly the insignia also, because they are a very intelligent, dignified, and popular body of women throughout the United States.

I have one of the insignia which was given me this morning to exhibit to this committee. That is all there is to it [exhibiting insignia to the committee]. They fix the price at exact cost, and no one is entitled to wear them except a daughter upon permit from the registrar general, and no one else can get them, but now they are hocking them around the country.

I think it is an extraordinary case.

Mr. OGLESBY. They have a design patent on this?

Mr. DAVIS. Oh, yes; that is it.

Mr. OGLESBY. And when does that expire?

Mr. DAVIS. It has expired already. There is a fac simile of this design in their by-laws, charter and constitution (exhibiting pamphlet to the committee). This is the constitution I have been reading from.

Mr. CARTER. Have they more than one design?

Mr. DAVIS. No.

Mr. OGLESBY. When did it expire?

Mr. DAVIS. It was issued for 14 years, in 1891.

Mr. BRADFORD. Issued September 22, 1891.

Mr. DAVIS. For 14 years.

Mr. OGLESBY. You would not expect to sue anyone who manufactured this emblem since the expiration of the patent?

Mr. DAVIS. They have not any design of that kind at all. They simply want to protect themselves in the future if they can.

Mr. OGLESBY. I do not think the Constitution would permit us to pass a law that would give you such right.

Mr. DAVIS. They do not want you to do anything like that.

Mr. OGLESBY. Mr. Davis, this matter was brought up in connection with one or two other bills for the extension of patents and the Chairman was present, and the committee had a tentative agreement at that time that they would take up the question at some time when we could get a full committee and discuss it in executive session, and decide whether we would consider special bills extending any patents. Unless there is some specially good reason for it, I should not feel disposed to ask the committee to pass upon it until Mr. Morrison's return.

Mr. OGLESBY. I would like to have Mr. Solberg give us the benefit of his opinion.

Mr. DAVIS. There are precedents for it.

Mr. OGLESBY. It has not been done for a long time.

Mr. SOLBERG. I ought to answer that with great caution, but I think if that is not done there will be an endeavor to get some protection through action under the copyright law, and it seems exceedingly difficult to determine that it is going to be possible to give the association the protection they desire, and which they think everybody agrees they ought to have, by any amendment of any of the copyright laws or by any action under the existing laws.

Mr. DAVIS. I have been so informed.

Mr. SOLBERG. And it is for this reason that the bill, as I understand it, was proposed. And it is probably mainly a constitutional question as to the form of the bill and, consequently, whether it can be so framed as not to lead to a flood of other bills proposing extensions of expired patents. But I think everyone is desirous that the association should be protected.

Mr. DAVIS. The question of commercialism enters into most patents protecting people's rights. Is not that the main idea of the issuance of patents? There is no special benefit to this except as a matter of honor and dignity to the Daughters of the American Revolution. I think that makes it an exceptional case.

Now, Mr. Chairman, in order to make it more clear to yourself and the committee, and in order to show the real object of the association and that commercialism has no part therein I desire to insert as part of my statement the following from the constitution of the Daughters of the American Revolution:

The objects of this society are:

(1) To perpetuate the memory of the spirit of the men and women who achieved American independence, by the acquisition and protection of historical spots, and the erection of monuments; by the encouragement of historical research in relation to the Revolution and the publication of its results; by the preservation of documents and relics, and of the records of the individual services of Revolutionary soldiers and patriots; and by the promotion of celebrations of all patriotic anniversaries.

(2) To carry out the injunction of Washington in his farewell address to the American people, "to promote, an an object of primary importance, institutions for the general diffusion of knowledge," thus developing an enlightened public opinion, and affording to young and old such advantages as shall develop in them the largest capacity for performing the duties of American citizens.

(3) To cherish, maintain, and extend the institutions of American freedom, to foster true patriotism and love of country, and to aid in securing for mankind all the blessings of liberty.

I am very much obliged to you, gentlemen.

Mr. OGLESBY. While we are on the subject, we have two or three good patent lawyers here. If any of you gentlemen see any objection to the extension of patents of this kind or see where it might run us onto the rocks, we would be glad to get a little advice.

Mr. BRADFORD. Mr. Chairman, if you want the result of some thought that I have given to these same questions, I might make a short statement. I had the question put up to me about a year ago by a society as to whether or not it was advisable to take a patent for a badge of this same general character, and I advised against it, my opinion being that the courts would protect the rights of these societies under the common law and prevent any use by others that would be in conflict with the rights of the owners. It is purely a society badge, it is purely a private matter, and I do not believe that the courts would recognize the right of anyone to violate those rights by adopting or copying the badge and putting it into commercial use. The rights are akin to trade-mark rights rather than patent rights, and trade-mark rights do run perpetually. There is no reason why the Society of the Daughters of the American Revolution or any other society should not have a permanent right in any insignia which is adopted as the characterization of that society.

Mr. OGLESBY. It might be applied to another art.

Mr. BRADFORD. These are symbolic badges, symbolizing the principles or the precepts of the society in which they indicate membership.

Mr. OGLESBY. As you probably know, we have a bill under consideration now, to which we have given a good deal of attention, to forbid the giving of copyright protection to manufacturers of whisky and beer and other articles of commerce under the name "Quaker." The Quakers are trying to stop the use of their church name.

Mr. BRADFORD. It is not the Quaker church, is it, that is behind that bill? Is it not the Quaker Oats Co.?

Mr. OGLESBY. The Quaker Society, or the Society of Friends, is pushing the bill to forbid the copyrighting of their name; that is, the bill applies to any religious society or any society of this kind. So if that bill were passed it would prevent anybody from getting a copyright on "D. A. R. Oats" or "D. A. R. Baby Food."

Mr. BRADFORD. Referring again for a moment to the merits of this particular bill, you are confronted with this situation: They did voluntarily avail themselves of the provisions of the design patent statute. They took a patent for 14 years. Under their contract with the public the subject matter of that patent is now free; it is in the public domain and anyone has the right to use it. It seems to me the only protection they can now get is through an appeal to Congress such as they have made.

Mr. CARTER. Could not that name be trade-marked?

Mr. BRADFORD. Not now. You can not by trade-mark prolong a patent monopoly.

Mr. OGLESBY. I assume this is the only way they can get protection—by an act of Congress.

Mr. BRADFORD. I can see no reason in the world why they should not have an extension for 100 years.

Mr. GLYNN. This would do no harm, notwithstanding the other method would have been a better way of getting at it—

Mr. BRADFORD. If they had adopted it in the beginning.

Mr. SMITH. It would be better for them anyway to get an act of Congress, since they are an organization of national character. There is no organization similar to it, except the Daughters of the Confederacy. It seems to me it would be a nice thing to give it to them.

Mr. BRADFORD. It is their own concern, and the public has really no concern in it at all.

Mr. DODSON. The law on the subject, Mr. Chairman, is so clear where a person elects to choose statutory rather than common-law protection, it seems to me that is an added reason why, having forfeited the common-law rights, they ought to be protected by this bill. It is not a matter of money to anyone. It seems to me a very meritorious thing, because we are all fond of the Daughters of the American Revolution as a society.

(Thereupon the committee proceeded to the consideration of other business.)



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